

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO. 3798 OF 2011

	Amarsinha s/o Vasantao Kirdatt, Age 39 years, Occupation Business, Resident of Osmanabad, Taluka and District Osmanabad	Petitioner
	V E R S U S	
1	The State of Maharashtra, Through the Secretary, Food, Civil Supply and Consumer Protection Department, Mantralaya, Mumbai 32.	Respondents
2	The Secretary, Food, Civil Supply and Consumer Protection Department, Mantralaya, Mumbai 32.	
3	The District Supply Officer, Osmanabad, District Osmanabad	
4	The Tahsildar Osmanabad, District Osmanabad	
5	The Deputy Commissioner, Civil Supply, Aurangabad	
6	Sana Mahila Bachat Gat, Osmanabad	

Smt. M.A. Kulkarni, Advocate for the petitioner
Smt. R.K. Ladda, AGP for respondent Nos. 1 to 5
Shri A.R. Rathod, Advocate for respondent No.6

CORAM : A.V. NIRGUDE, J.
DATED : 29th July, 2011

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. By consent of the parties, writ petition is taken up for final hearing.
3. This writ petition filed under Articles 226 & 227 of the Constitution of India challenges a very peculiar order passed by the learned District Supply Officer, Osmanabad, dated 13th May, 2011, implementing the earlier proclamation and awarding a fair price shop to respondent No. 6. The petitioner used to run the said shop earlier and by an order dated 31st January, 2011, his licence to run the shop was cancelled. He filed a revision against the said order before the

learned Deputy Commissioner (Supply), Aurangabad, but, on 7th May, 2011, his revision was dismissed. However, the learned Deputy Commissioner directed the District Supply Officer, Osmanabad not to implement the proclamation and not to grant the shop to any third party till appeal period is over. Despite of this clear order, which is communicated to the District Supply Officer, Osmanabad, he passed the above mentioned impugned order. In the impugned order, the District Supply Officer, Osmanabad, has quoted the entire operative part of the order passed by the learned Deputy Commissioner, and in violation of such order, he tried to justify his action by saying that the allotment of a fair price shop is necessary in the interest of public-distribution-system which caters the need of poor citizens under poverty line etc.

4. The learned AGP practically has no argument to defend the propriety of this impugned order. The learned Advocate appearing for respondent No. 6 contended that pursuant to the impugned order, his client has already started to run his shop and that if this order is set aside, his client would stop getting commodities for distribution and their trade will stop resulting into irreparable monetary loss. I am afraid, if the impugned order is patently illegal, it not only requires to set aside, but whoever getting the benefit of this order, would also suffer. I am not inclined to stop only by setting aside the order, but I would request the learned Deputy Commissioner to consider whether any penal action can be initiated against the then District Supply Officer, Osmanabad, Shri. D.B. Jaybhaye.

In view of above, writ petition succeeds. The writ petition is allowed. The impugned order stands set aside. Rule is made absolute.

(A.V. NIRGUDE, J.)

